



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1994

Mr. Gregory J. Pfeifer
Staff Attorney
Legal Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-493

Dear Mr. Pfeifer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26159.

The Texas Natural Resource Conservation Commission ("TNRCC") has received a request for "a copy of the letter sent to your agency regarding hydrolic [sic] and oil spillage in or near the Wimberley Maintenance Barn and the Burnett Ranch road construction project." You wish to withhold the handwritten letter of complaint and the complainant's name and address in a response letter from Chris Smith of the TNRCC dated April 25, 1994. You believe section 552.101 of the Government Code, which incorporates the informer's privilege, excepts these items from required public disclosure. You have submitted copies of both of these documents for our review.

In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials, and, by preserving their anonymity, encourages them to perform that obligation. [Citations omitted.]

Although the privilege ordinarily applies to the efforts of law-enforcement agencies, it may apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1, 279 at 1-2 (1981); *see also* Open Records Decision No. 208 (1978) at 1-2. This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988) at 3; 391 (1983) at 3. Significantly, however, the privilege protects the content of communications only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60. Additionally, once an individual who would have cause to resent the communication knows who the informer is, the informer's privilege is inapplicable. *See* Open Records Decision No. 202 (1978) at 2 (quoting *Roviaro*, 353 U.S. at 60).

You have informed this office that the complaint alleges violations of title 30 of the Texas Administrative Code chapter 335, which relates to the handling and storage of industrial solid waste. You further aver that TNRCC is authorized to enforce the applicable laws and regulations. Finally, because the complaint is handwritten, you believe that the entire complaint letter identifies the informant.

We agree. We therefore conclude that, unless the requestor knows the complainant's identity, section 552.101 of the Government Code authorizes the department to withhold the entire complaint letter, as well as the complainant's name and address on the TNRCC's response letter, from the requestor.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LRD/rho

Ref.: ID# 26159

¹The informer's privilege, unlike other components of Government Code § 552.101, is discretionary. Open Records Decision No. 549 (1990) at 6. Thus, the TNRCC may choose to release the requested information with impunity.

Enclosures: Submitted documents

cc: The Honorable Craig D. Payne
County Commissioner, Precinct 3
Hays County Courthouse
San Marcos, Texas 78666
(w/o enclosures)